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U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION
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CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THOMAS E. PEREZ, Secretary of Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS,

Defendant.

Civil Action No. 4:16-CV-1057-A

## APPENDIX TO PLAINTIFF'S SETTLEMENT AUTHORITY REPORT

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Respectfully submitted,

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Certificate of Service

On April 7, 2017, I served the foregoing document on defendant, the Association of Professional Flight Attendants, by mailing it by prepaid first-class mail to defendant's counsel of record, addressed as follows:

Andrew D. Roth
Bredhoff & Kaiser, P.L.L.C.
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Brian W. Stoltz
Assistant United States Attorney

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Code of Federal Regulations
Title 28. Judicial Administration
Chapter I. Department of Justice
Part 0. Organization of the Department of Justice (Refs & Annos)
Subpart Y. Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures (Refs & Annos)

28 C.F.R. § 0.160

§ 0.160 Offers that may be accepted by Assistant Attorneys General.

Effective: May 29, 2015
Currentness

(a) Subject to the limitations set forth in paragraph (d) of this section, Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $10,000,000 or 15 percent of the original claim, whichever is greater;

(2) Accept offers in compromise of claims asserted by the United States in all cases in which a qualified financial expert has determined that the offer in compromise is likely the maximum that the offeror has the ability to pay;

(3) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed $4,000,000; and

(4) Accept offers in compromise in all nonmonetary cases.

(b) Subject to the limitations set forth in paragraph (d) of this section, the Assistant Attorney General, Tax Division, is further authorized to accept offers in compromise of, or settle administratively, claims against the United States, regardless of the amount of the proposed settlement, in all cases in which the Joint Committee on Taxation has indicated that it has no adverse criticism of the proposed settlement.

(c) Subject to the limitations set forth in paragraph (d) of this section, the Assistant Attorney General, Environment and Natural Resources Division, is further authorized to approve settlements under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., regardless of the amount of the proposed settlement, with:

(1) Parties whose contribution to contamination at a hazardous waste site is de minimis within the meaning of 42 U.S.C. 9622(g); or

(2) Parties whose responsibility can be equitably allocated and are paying at least the allocated amount.

(d) Any proposed settlement, regardless of amount or circumstances, must be referred to the Deputy Attorney General or the Associate Attorney General, as appropriate:

(1) When, for any reason, the compromise of a particular claim would, as a practical matter, control or adversely influence the disposition of other claims and the compromise of all the claims taken together would exceed the authority delegated by paragraph (a) of this section; or

(2) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by a department or agency involved, or for any other reason, the proposed settlement should receive the personal attention of the Deputy Attorney General or the Associate Attorney General, as appropriate;

(3) When the proposed settlement converts into a mandatory duty the otherwise discretionary authority of a department or agency to promulgate, revise, or rescind regulations;

(4) When the proposed settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek particular appropriation or budget authorization; or

(5) When the proposed settlement otherwise limits the discretion of a department or agency to make policy or managerial decisions committed to the department or agency by Congress or by the Constitution.

**Credits**

[Order No. 960–81, 46 FR 52351, Oct. 27, 1981; 56 FR 8923, March 4, 1991; Order No. 1958–95, 60 FR 15674, March, 27, 1995; Order No. 3001–2008, 73 FR 54947, Sept. 24, 2008; Order No. 3532–2015, 80 FR 30618, May 29, 2015]

SOURCE: Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445–70, 35 FR 19397, Dec. 23, 1970; 51 FR 31940, Sept. 8, 1986; 52 FR 17951, May 13, 1987; 52 FR 24447, July 1, 1987; 52 FR 44971, Nov. 24, 1987; 53 FR 10871, April 4, 1988; 53 FR 31323, Aug. 18, 1988; 54 FR 816, Jan. 10, 1989; 54 FR 47353, Nov. 14, 1989; 54 FR 50739, Dec. 11, 1989; 55 FR 1583, Jan. 17, 1990; 55 FR 20456, May 17, 1990; 55 FR 27808, July 6, 1990; 55 FR 40654, Oct. 4, 1990; 56 FR 12350, March 25, 1991; 56 FR 21600, May 10, 1991; 56 FR 25629, June 5, 1991; 58 FR 62260, Nov. 26, 1993; Order No. 1975–95, 60 FR 35335, July 7, 1995; Order No. 2078–97, 62 FR 23658, May 1, 1997, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Notes of Decisions (26)

Current through March 2, 2017; 82 FR 12300.

**End of Document**

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28 C.F.R. § 0.161

# § 0.161 Acceptance of certain offers by the Deputy Attorney General or Associate Attorney General, as appropriate.

Currentness

(a) In all cases in which the acceptance of a proposed offer in compromise would exceed the authority delegated by § 0.160, the Assistant Attorney General concerned shall, when he is of the opinion that the proposed offer should be accepted, transmit his recommendation to that effect to the Deputy Attorney General or the Associate Attorney General, as appropriate.

(b) The Deputy Attorney General or the Associate Attorney General, as appropriate, is authorized to exercise the settlement authority of the Attorney General as to all claims asserted by or against the United States.

**Credits**
[Order No. 960–81, 46 FR 52351, Oct. 27, 1981; Order No. 1958–95, 60 FR 15675, March 27, 1995]

SOURCE: Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445–70, 35 FR 19397, Dec. 23, 1970; 51 FR 31940, Sept. 8, 1986; 52 FR 17951, May 13, 1987; 52 FR 24447, July 1, 1987; 52 FR 44971, Nov. 24, 1987; 53 FR 10871, April 4, 1988; 53 FR 31323, Aug. 18, 1988; 54 FR 816, Jan. 10, 1989; 54 FR 47353, Nov. 14, 1989; 54 FR 50739, Dec. 11, 1989; 55 FR 1583, Jan. 17, 1990; 55 FR 20456, May 17, 1990; 55 FR 27808, July 6, 1990; 55 FR 40654, Oct. 4, 1990; 56 FR 12350, March 25, 1991; 56 FR 21600, May 10, 1991; 56 FR 25629, June 5, 1991; 58 FR 62260, Nov. 26, 1993; Order No. 1975–95, 60 FR 35335, July 7, 1995; Order No. 2078–97, 62 FR 23658, May 1, 1997, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Notes of Decisions (1)

Current through March 2, 2017; 82 FR 12300.

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28 C.F.R. § 0.162

§ 0.162 Offers which may be rejected by Assistant Attorneys General.

Effective: May 29, 2015
Currentness

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to reject offers in compromise of any claims in behalf of the United States, or, in compromises or administrative actions to settle, against the United States, except in those cases which come under § 0.160(d)(2).

**Credits**

[Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445–70, 35 FR 19397, Dec. 23, 1970; Order No. 960–81, 46 FR 52352, Oct. 27, 1981; Order No. 3532–2015, 80 FR 30618, May 29, 2015]

SOURCE: Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445–70, 35 FR 19397, Dec. 23, 1970; 51 FR 31940, Sept. 8, 1986; 52 FR 17951, May 13, 1987; 52 FR 24447, July 1, 1987; 52 FR 44971, Nov. 24, 1987; 53 FR 10871, April 4, 1988; 53 FR 31323, Aug. 18, 1988; 54 FR 816, Jan. 10, 1989; 54 FR 47353, Nov. 14, 1989; 54 FR 50739, Dec. 11, 1989; 55 FR 1583, Jan. 17, 1990; 55 FR 20456, May 17, 1990; 55 FR 27808, July 6, 1990; 55 FR 40654, Oct. 4, 1990; 56 FR 12350, March 25, 1991; 56 FR 21600, May 10, 1991; 56 FR 25629, June 5, 1991; 58 FR 62260, Nov. 26, 1993; Order No. 1975–95, 60 FR 35335, July 7, 1995; Order No. 2078–97, 62 FR 23658, May 1, 1997, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Current through March 2, 2017; 82 FR 12300.

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28 C.F.R. § 0.164

§ 0.164 Civil claims that may be closed by Assistant Attorneys General.

Currentness

Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to close (other than by compromise or by entry of judgment) claims asserted by the United States in all cases in which they would have authority to accept offers in compromise of such claims under § 0.160(a), except:

(a) When for any reason, the closing of a particular claim would, as a practical matter, control or adversely influence the disposition of other claims and the closing of all the claims taken together would exceed the authority delegated by this section; or

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the department or agency involved, or for any other reason, the proposed closing should receive the personal attention of the Attorney General, the Deputy Attorney General or the Associate Attorney General, as appropriate.

**Credits**
[Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445–70, 35 FR 19397, Dec. 23, 1970; Order No. 543–73, 38 FR 29587, Oct. 26, 1973; Order No. 699–77, 42 FR 15315, Mar. 22, 1977; Order No. 960–81, 46 FR 52352, Oct. 27, 1981; 56 FR 8924, March 4, 1991; Order No. 1958–95, 60 FR 15675, March 27, 1995]

SOURCE: Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445–70, 35 FR 19397, Dec. 23, 1970; 51 FR 31940, Sept. 8, 1986; 52 FR 17951, May 13, 1987; 52 FR 24447, July 1, 1987; 52 FR 44971, Nov. 24, 1987; 53 FR 10871, April 4, 1988; 53 FR 31323, Aug. 18, 1988; 54 FR 816, Jan. 10, 1989; 54 FR 47353, Nov. 14, 1989; 54 FR 50739, Dec. 11, 1989; 55 FR 1583, Jan. 17, 1990; 55 FR 20456, May 17, 1990; 55 FR 27808, July 6, 1990; 55 FR 40654, Oct. 4, 1990; 56 FR 12350, March 25, 1991; 56 FR 21600, May 10, 1991; 56 FR 25629, June 5, 1991; 58 FR 62260, Nov. 26, 1993; Order No. 1975–95, 60 FR 35335, July 7, 1995; Order No. 2078–97, 62 FR 23658, May 1, 1997, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Current through March 2, 2017; 82 FR 12300.

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28 C.F.R. § 0.168

§ 0.168 Redelegation by Assistant Attorneys General.

Effective: May 29, 2015
Currentness

(a) Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to redelegate to subordinate division officials and United States Attorneys any of the authority delegated by §§ 0.160(a), (b), and (c), 0.162, 0.164, and 0.172(b), except that any disagreement between a United States Attorney or other Department attorney and a client agency over a proposed settlement that cannot be resolved below the Assistant Attorney General level must be presented to the Assistant Attorney General for resolution.

(b) Redelegations of authority under this section shall be in writing and shall be approved by the Deputy Attorney General or the Associate Attorney General, as appropriate, before taking effect.

(c) Existing delegations and redelegations of authority to subordinate division officials and United States Attorneys to compromise or close civil claims shall continue in effect until modified or revoked by the respective Assistant Attorneys General.

(d) Subject to the limitations set forth in § 0.160(d) and paragraph (a) of this section, redelegations by the Assistant Attorneys General to United States Attorneys may include the authority to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed $10,000,000; and

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed $1,000,000.

**Credits**

[Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 543–73, 38 FR 29587, Oct. 26, 1973; Order No. 699–77, 42 FR 15315, Mar. 21, 1977; Order No. 781–78, 43 FR 20793, May 15, 1978; Order No. 960–81, 46 FR 52352, Oct. 27, 1981; 48 FR 50714, Nov. 3, 1983; 56 FR 8924, March 4, 1991; Order No. 1958–95, 60 FR 15675, March 27, 1995; Order No. 3532–2015, 80 FR 30618, May 29, 2015]

SOURCE: Order No. 423–69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445–70, 35 FR 19397, Dec. 23, 1970; 51 FR 31940, Sept. 8, 1986; 52 FR 17951, May 13, 1987; 52 FR 24447, July 1, 1987; 52 FR 44971, Nov. 24, 1987; 53 FR

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AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Notes of Decisions (9)

Current through March 2, 2017; 82 FR 12300.

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28 C.F.R. Pt. 0, Subpt. Y, App.

APPENDIX TO SUBPART Y OF PART 0—REDELEGATONS OF AUTHORITY TO COMPROMISE AND CLOSE CIVIL CLAIMS

Effective: June 5, 2015
Currentness

CIVIL DIVISION

Redelegation of Authority, to Branch Directors, Heads of Offices and United States Attorneys in Civil Division Cases

[Directive No. 1–15]

By virtue of the authority vested in me by part 0 of title 28 of the Code of Federal Regulations, particularly §§ 0.45, 0.160, 0.164, and 0.168, it is hereby ordered as follows:

Section 1. Scope of Delegation Authority

(a) Delegation to Deputy Assistant Attorneys General. The Deputy Assistant Attorneys General are hereby delegated all the power and authority of the Assistant Attorney General in charge of the Civil Division, including with respect to the institution of suits, the acceptance or rejection of compromise offers, the administrative settlement of claims, and the closing of claims or cases, unless any such authority or power is required by law to be exercised by the Assistant Attorney General personally or has been specifically delegated to another Department official.

(b) Delegation to United States Attorneys; Branch, Office and Staff Directors; and Attorneys-in–Charge of Field Offices. Subject to the limitations imposed by 28 CFR 0.160(d) and 0.164, and sections 1(e) and 4(b) of this directive, and the authority of the Solicitor General set forth in 28 CFR 0.163, United States Attorneys; Branch, Office, and Staff Directors; and Attorneys-in–Charge of Field Offices, with respect to matters assigned or delegated to their respective components, are hereby delegated the authority to:

(1) Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed $10,000,000;

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed $1,000,000;

(3) Reject any offers in compromise; and

(4) Close any affirmative claim or case where the gross amount of the original claim does not exceed $10,000,000.

(c) Subject to the limitations imposed by sections 1(e), 4(b), and 5 of this directive, United States Attorneys, Directors, and Attorneys-in–Charge are hereby delegated the authority to:

(1) File suits, counterclaims, and cross-claims, or take any other action necessary to protect the interests of the United States in all routine nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the original claim does not exceed $10,000,000. Such actions in nonmonetary cases which are other than routine will be submitted for the approval of the Assistant Attorney General, Civil Division; and,

(2) Issue subpoenas, civil investigative demands, and any other compulsory process.

(d) United States Attorneys may redelegate in writing the above-conferred compromise and suit authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(e) Limitations on delegations.

(1) The authority to compromise cases, settle claims administratively, file suits, counterclaims, and cross-claims, to close claims or cases, or take any other action necessary to protect the interests of the United States, delegated by paragraphs (a), (b), and (c) of this section, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Civil Division, when:

(i) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs.

(ii) Because a novel question of law or a question of policy is presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Civil Division.

(iii) The agency or agencies involved are opposed to the proposed action. The views of an agency must be solicited with respect to any significant proposed action if it is a party, if it has asked to be consulted with respect to any such proposed action, or if such proposed action in a case would adversely affect any of its policies.

(iv) The United States Attorney involved is opposed to the proposed action and requests that the matter be submitted to the Assistant Attorney General for decision.

(v) The case is on appeal, except as determined by the Director of the Appellate Staff.

(2) In fraud or False Claims Act cases and matters, for reasons similar to those listed in sub-section l(e)(l)(i) through l(e)(l)(iii) above, the Director of the Fraud Section of the Commercial Litigation Branch, after consultation with the United States Attorney, may determine that a case or matter will not be delegated to the United States Attorney, but personally or jointly handled, or monitored, by the Civil Division.

Section 2. Action Memoranda

(a) Whenever, pursuant to the authority delegated by this Directive, an official of the Civil Division or a United States Attorney accepts a compromise, closes a claim or files a suit or claim, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file. In the case of matters compromised, closed, or filed by United States Attorneys, a copy of the memorandum must, upon request therefrom, be sent to the appropriate Branch or Office of the Civil Division.

(b) The compromising of cases or closing of claims or the filing of suits for claims, which a United States Attorney is not authorized to approve, shall be referred to the appropriate Branch or Office within the Civil Division, for decision by the Assistant Attorney General or the appropriate authorized person within the Civil Division. The referral memorandum should contain a detailed description of the matter, the United States Attorney's recommendation, the agency's recommendation where applicable, and a full statement of the reasons therefor.

Section 3. Return of Civil Judgment Cases to Agencies

Claims arising out of judgments in favor of the United States which cannot be permanently closed as uncollectible may be returned to the referring Federal agency for servicing and surveillance whenever all conditions set forth in USAM 4–3.230 have been met.

Section 4. Authority for Direct Reference and Delegation of Civil Division Cases to United States Attorneys

(a) Direct reference to United States Attorneys by agencies. The following civil actions under the jurisdiction of the Assistant Attorney General, Civil Division, may be referred by the agency concerned directly to the appropriate United States Attorney for handling in trial courts, subject to the limitations imposed by paragraph (b) of this section. United States Attorneys are hereby delegated the authority to take all necessary steps to protect the interests of the United States, without prior approval of the Assistant Attorney General, Civil Division, or his representatives, subject to the limitations set forth in section 1(e) of this directive. Agencies may, however, if special handling is desired, refer these cases to the Civil Division. Also, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Civil Division should be consulted.

(1) Money claims by the United States where the gross amount of the original claim does not exceed $10,000,000.

(2) Single family dwelling house foreclosures arising out of loans made or insured by the Department of Housing and Urban Development, the Department of Veterans Affairs, or the Farm Service Agency.

(3) Suits to enjoin violations of, or to collect penalties under, the Agricultural Adjustment Act of 1938, 7 U.S.C. 1376; the Packers and Stockyards Act, 7 U.S.C. 203, 207(g), 213, 215, 216, 222, and 228a; the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. 499c(a) and 499h(d); the Egg Products Inspection Act, 21 U.S.C. 1031 et seq.; the Potato Research and Promotion Act, 7 U.S.C. 2611 et seq.; the Cotton Research and Promotion Act of 1966, 7 U.S.C. 2101 et seq.; the Federal Meat Inspection Act, 21 U.S.C. 601 et seq.; and the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 et seq.

(4) Suits by social security beneficiaries under the Social Security Act, 42 U.S.C. 402 et seq.

(5) Social Security disability suits under 42 U.S.C. 423 et seq.

(6) Black lung beneficiary suits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 921 et seq.

(7) Suits by Medicare beneficiaries under 42 U.S.C. 1395ff.

(8) Garnishment actions authorized by 42 U.S.C. 659 for child support or alimony payments and actions for general debt, 5 U.S.C. 5520a.

(9) Judicial review of actions of the Secretary of Agriculture under the food stamp program, pursuant to the provisions of 7 U.S.C. 2022 involving retail food stores.

(10) Cases referred by the Department of Labor for the collection of penalties or for injunctive action under the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970.

(11) Cases referred by the Department of Labor solely for the collection of civil penalties under the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. 2048(b).

(12) Cases referred by the Surface Transportation Board to enforce orders of the Surface Transportation Board or to enjoin or suspend such orders pursuant to 28 U.S.C. 1336.

(13) Cases referred by the United States Postal Service for injunctive relief under the nonmailable matter laws, 39 U.S.C. 3001 et seq.

(b) Cases not covered. Regardless of the amount in controversy (unless otherwise specified), the following matters normally will not be delegated to United States Attorneys for handling but will be personally or jointly handled or monitored by the appropriate Branch or Office within the Civil Division:

(1) Cases in the Court of Federal Claims.

(2) Cases within the jurisdiction of the Commercial Litigation Branch involving patents, trademarks, copyrights, etc.

(3) Cases before the United States Court of International Trade.

(4) Any case involving bribery, conflict of interest, breach of fiduciary duty, breach of employment contract, or exploitation of public office.

(5) Any case involving vessel-caused pollution in navigable waters.

(6) Cases on appeal, except as determined by the Director of the Appellate Staff.

(7) Any case involving litigation in a foreign court.

(8) Criminal proceedings arising under statutes enforced by the Food and Drug Administration, the Consumer Product Safety Commission, the Federal Trade Commission, and the National Highway Traffic Safety Administration (relating to odometer tampering), except as determined by the Director of the Consumer Protection Branch.

(9) Nonmonetary civil cases, including injunction suits, declaratory judgment actions, and applications for inspection warrants, and cases seeking civil penalties where the gross amount of the original claim exceeds $10,000,000.

(10) Cases arising under the statutes listed in 28 CFR 0.45(j), except as determined by the Director of the Consumer Protection Branch.

(11) Administrative claims arising under the Federal Tort Claims Act.

Section 5. Civil Investigative Demands

Authority relating to Civil Investigative Demands issued under the False Claims Act is hereby delegated to United States Attorneys in cases that are delegated or assigned as monitored to their respective components. In accordance with guidelines provided by the Assistant Attorney General, each United States Attorney must provide notice and a report of Civil Investigative Demands issued by the United States Attorney. Authority relating to Civil Investigative Demands issued under the False Claims Act in cases that are jointly or personally handled by the Civil Division is hereby delegated to the Director of the Fraud Section of the Commercial Litigation Branch. When a case is jointly handled by the Civil Division and a United States Attorney's Office, the Director of the Fraud Section will issue a Civil Investigative Demand only after requesting the United States Attorney's recommendation.

Section 6. Adverse Decisions

All final judicial decisions adverse to the Government, other than bankruptcy court decisions except as provided herein, involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult title 2 of the United States Attorney's Manual for procedures and time limitations. An appeal of such a decision, as well as an appeal of an adverse decision by a district court or bankruptcy appellate panel reviewing a bankruptcy court decision or a direct appeal of an adverse bankruptcy court decision to a court of appeals, cannot be taken without approval of the Solicitor General. Until the Solicitor General has made a decision whether an appeal will be taken, the Government attorney handling the case must take all necessary procedural actions to preserve the Government's right to take an appeal, including filing a protective notice of appeal when the time to file a notice of appeal is about to expire and the Solicitor General has not yet made a decision. Nothing in the foregoing directive affects this obligation.

Section 7. Definitions

(a) For purposes of this directive, in the case of claims involving only civil penalties, other than claims defined in 28 CFR 0.169(b), the phrase “gross amount of the original claim” shall mean the maximum amount of penalties sought.

(b) For purposes of this directive, in the case of claims asserted in bankruptcy proceedings, the phrase “gross amount of the original claim” shall mean liquidation value. Liquidation value is the forced sale value of the collateral, if any, securing the claim(s) plus the dividend likely to be paid for the unsecured portion of the claim(s) in an actual or hypothetical liquidation of the bankruptcy estate.

Section 8. Supersession

This directive supersedes Civil Division Directive No. 1–10 regarding redelegation of the Assistant Attorney General's authority in Civil Division cases to Branch Directors, heads of offices, and United States Attorneys.

Section 9. Applicability

This directive applies to all cases pending as of the date of this directive and is effective immediately.

Section 10. No Private Right of Action

This directive consists of rules of agency organization, procedure, and practice and does not create a private right of action for any private party to challenge the rules or actions taken pursuant to them.

CRIMINAL DIVISION

[Memo No. 375]

Standards And Procedures With Respect To Criminal Prosecutions
Involving Certain Agricultural Marketing Quota Penalty Cases

2

MEMORANDUM

*United States Attorney*
*Northern District of Texas*
*1100 Commerce Street; 3rd Floor*
*Dallas, Texas 75242-1699*

| Subject: | Date: |
|---|---|
| Authority to Initiate and Compromise Civil Litigation | July 6, 2015 |

| To | From: |
|---|---|
| All Staff<br>Northern District of Texas | John R. Parker JRP<br>Acting United States Attorney |

The authority of the United States Attorney to compromise or settle civil claims set forth in Civil Division Directive No. 1-15 (published in the Appendix to Subpart Y of Part 0, immediately following 28 C.F.R. § 0.172), and Section 4-3.120(C) of the USAM is hereby re-delegated pursuant to Section 1(d) of that Directive as follows:

The Civil Chief shall have full settlement authority of the United States Attorney to (1) accept offers in compromise of claims by the United States in which the gross amount of the original claim does not exceed $10 million, (2) accept offers in compromise of claims against the United States where the principal amount of the proposed settlement does not exceed $1 million, (3) reject any offer in compromise, and (4) close any affirmative claim or case where the gross amount of the original claim does not exceed $10 million. The Civil Chief shall confer with the United States Attorney on all proposed settlements of $500,000.00 or greater.

The Deputy Civil Chiefs shall each have authority to settle cases in which the amount of compromise is up to $250,000.00, but shall confer with the Civil Chief on all proposed settlements of $100,000.00 or more unless the Civil Chief is absent from the district or otherwise unavailable.

The Civil Chief shall further have the full authority of the United States Attorney to file suits, counterclaims, and cross-claims, to close, or to take any other action necessary to protect the interests of the United States in all routine non-monetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases in which the gross amount of the claim does not exceed $10 million.

This re-delegation of authority supersedes all previous re-delegations of authority to initiate and compromise civil litigation and is subject to the limitations contained in sections 1(e), 4(b) and 5 of Civil Division Directive No. 1-15.

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**SECRETARY OF LABOR**
WASHINGTON, D.C. 20210

## SECRETARY'S ORDER 03-2012

**SUBJECT::** Delegation of Authority and Assignment of Responsibility to the Director, Office of Labor-Management Standards

1. **Purpose.** To delegate authority and assign responsibility to the Director, Office of Labor-Management Standards

2. **Authorities.** This Order is issued under the authority of 5 U.S.C. § 301 (Departmental Regulations); 29 U.S.C. § 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 of 1950 (5 U.S.C. App 1 Reorg. Plan 6 of 1950); and the authorities cited in Section 5 of this Order.

3. **Directives Affected.** Secretary's Order 8-2009 is hereby cancelled.

4. **Background.** On November 8, 2009, the Department of Labor reorganized its organization structure, dissolving the Employment Standards Administration (ESA). ESA had been headed by the Assistant Secretary of Labor for Employment Standards ("Assistant Secretary"). With the dissolution of ESA, its sub-agencies, including the Office of Labor-Management Standards (OLMS) became separate agencies -headed by a Director. Secretary's Order 8-2009 (Section 5) delegated authorities and responsibilities previously held by the Assistant Secretary of ESA to the Director of OLMS. This Order cancels Secretary's Order 8-2009. The Secretary delegated authority and assigned responsibilities to the ARB to review recommended decisions by administrative law judges and issue final agency decisions under the statutes and regulations enumerated in Sections 5(A)(1) and (2) of this Order. *See* Secretary's Order 02-2012.

5. **Delegation of Authority and Assignment of Responsibilities.**

   A. The Director, Office of Labor-Management Standards is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

      (1) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. § 401, *et seq.*; with the exception of the authority under 29 U.S.C.§ 481(h) granted to the Administrative Review Board in Secretary's Order 02-2012. If, in the course of investigations under the Labor-Management Reporting and Disclosure Act, there appear to be indications of organized crime and labor racketeering, the Director of OLMS shall promptly notify the

Figure 2-2: Secretary's Order 03-2012

Inspector General, who also has statutory authority to investigate such issues. The Inspector General shall have the power to assume the lead in further investigative activities arising from such case with respect to issues involving organized crime and labor racketeering.

(2) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978 (5 U.S.C. § 7120), Section 1017 of the Foreign Service Act of 1980 (22 U.S.C. § 4117), and Section 220(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. § 1351(a)(l)), and the regulations pertaining to such sections at 29 C.F.R. Parts 457 - 459; with the exception of the authority granted to the Administrative Review Board in Secretary's Order 02-2012.

(3) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. § 1209.

(4) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. § 5333(b), and related provisions.

(5) The employee protection provisions certified under Sections 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. § 565(a), (b), (c), and (e).

(6) Executive Order 13496 (Notification of Employee Rights Under Federal Labor Laws) of January 30, 2009.

(7) Section 211(a) of the Labor Management Relations Act, 29 U.S.C. §181(a) ("Compilation of Collective Bargaining Agreements, etc.; Use of Data").

(8) Such additional Federal acts that from time to time may assign to the Secretary or the Department of Labor duties and responsibilities similar to those listed under subparagraphs (1) - (7) of this paragraph, as directed by the Secretary.

B. The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

Figure 2-2: Secretary's Order 03-2012

6. **Reservation of Authority and Responsibility.**

   A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

   B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 02-2012.

   C. Except as expressly provided in Section 5, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4-2006 (Office of Inspector General).

7. **Redelegation of Authority.** Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. **Effective Date.** This Order shall become effective immediately.

Hilda L. Solis

OCT 1 9 2012
Date

HILDA L. SOLIS
Secretary of Labor

Figure 2-2: Secretary's Order 03-2012

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70 FR 20601-01, 2005 WL 897686(F.R.)
NOTICES
DEPARTMENT OF LABOR
Employment Standards Administration

# Notice of Signing of a Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Civil Enforcement Actions Under the Labor-Management Reporting and Disclosure Act of 1959

Wednesday, April 20, 2005

AGENCY: Employment Standards Administration, Labor.

***20601** ACTION: Notice of Memorandum of Understanding between the Departments of Justice and Labor.

SUMMARY: The Department of Labor, Employment Standards Administration, is providing notice of a Memorandum of Understanding between the Departments of Justice and Labor (MOU), signed January 18, 2005. The MOU describes the responsibilities of each agency in the performance of functions under the Labor-Management Reporting and Disclosure Act of 1959 (Act). The purpose of the MOU is to revise a previous Memorandum of Understanding Between the Departments of Justice and Labor (1960 Memorandum of Understanding) concerning the allocation of such responsibilities. The MOU enhances administrative efficiency in the investigation and prosecution of crimes and civil violations arising under the Act. A copy of the MOU is set forth below.
EFFECTIVE DATE: January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Heaney, Chief, Division of Enforcement, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N-5119, Washington, DC 20210, (202) 693-1229 (this is not a toll-free number). TTY/TDD, 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86-257; 29 U.S.C. 401-531) is designed to protect the rights and interests of individual employees and union members as they relate to the activities of labor organizations, labor organization officers and employees, employers, labor relations consultants, and their officers and representatives. Section 607 of the Act (29 U.S.C. 527) provides that, in order to avoid unnecessary expense and duplication of functions among government agencies, the Secretary of Labor may make agreements for cooperation and mutual assistance in the performance of the Secretary's functions under the Act. The first such agreement was entered into between the Departments of Labor and Justice in the 1960 Memorandum of Understanding. See 25 FR 1708 (Feb. 26, 1960). To this same end, the MOU appended to this notice specifies which criminal matters will be investigated by the Department of Labor, which will be investigated by the Department of Justice, and which will be investigated by the Department of Justice under delegation from the Secretary of Labor, subject to specific arrangements agreed upon by the two Departments on a case-by-case basis.
In addition, the MOU contains a provision, not present in the 1960 Memorandum of Understanding, that specifies the respective roles of the Departments of Justice and Labor in regard to relief from the employment disabilities arising under § 504 of title V, 29 U.S.C. 504. Section 504 prohibits persons convicted of crimes specified in the statute from serving in stated capacities with an LMRDA-covered labor organization or employer association; from serving as a labor relations consultant or in a position with a corporation or association having specific collective bargaining authority or direct responsibility for labor-management relations; and from having decisionmaking authority or control of labor organization assets (other than as a member of the labor organization). The disability imposed by Section 504 extends until 13 years following a disqualifying conviction or end of any imprisonment resulting from such conviction.

No Third-Party Rights Created: The MOU was adopted for the purpose of the internal management of the Executive Branch. The MOU is not intended to, does not, and may not be relied upon to, create any rights, substantive or procedural, enforceable at law or in equity by any party in any matter civil or criminal, nor does the MOU place any limitations on otherwise lawful investigative or litigation prerogatives of the United States Department of Justice or otherwise lawful investigative prerogatives of the United States Department of Labor.

***20602** Dated at Washington, DC, this 15th day of April 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards Administration.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

**Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Civil Enforcement Actions Under the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86-257)**

Whereas, the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257; 73 Stat. 519) imposes certain duties and responsibilities upon the Attorney General and Secretary of Labor with regard to prosecution of crimes arising under the Act and civil enforcement actions under the Act; and

Whereas, that Act, in section 601, imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated, or are about to violate, any provision of the Act (except title I, or amendments made by this Act to other statutes); and

Whereas, that Act, in section 607, provides that the Secretary of Labor may make interagency agreements to avoid unnecessary expense and duplication of functions among Government agencies and ensure cooperation and mutual assistance in the performance of functions under the Act; and

Whereas, it is desirable and essential that areas of responsibility and procedures in connection with any investigations, prosecutions of offenses and civil enforcement actions arising under the Act should be the subject of formal agreement between the Departments;

It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:

1. Criminal Prosecutions. All cases involving violation of the criminal provisions of the Act will be prosecuted by the Department of Justice. Those cases investigated by the Department of Labor, hereinafter detailed, will be referred to the appropriate United States Attorney's office(s) where the criminal violation(s) occurred or to the Criminal Division, Department of Justice, as provided in section 607.

2. Investigations of Matters Made Criminal by the Act. Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, investigations under the Act will be conducted as follows:

(a) The Department of Labor will through its own staff investigate those criminal matters arising under:

1. Title II (Reporting by labor organizations, officers and employees of labor organizations and employers).

2. Title III (Trusteeship).

3. Section 501(c) (Embezzlement of union funds) of title V.

4. Section 502 (Bonding) of title V.

5. Section 503 (Making of loans and payment of fines) of title V.

6. Section 504 (Prohibition against certain persons holding office) of title V.

7. Section 602 (Extortionate picketing) of title VI.

8. Section 610 (Deprivation of rights by force and violence) of title VI.

(b) The Department of Justice will investigate those criminal matters arising under section 505 (Containing an amendment to section 302, Labor Management Relations Act, 1947, as amended) of title V, and under delegation from the Secretary of Labor, section 501(c) (Embezzlement of union funds) of title V, section 504 (Prohibition against certain person holding office) of title V, and section 610 (Deprivation of rights by force and violence) of title VI.

3. Notification. Whenever either Department learns or is informed of any matter coming within the investigative jurisdiction of the other Department, as set forth above, it will notify such other Department in writing and furnish all information in its possession regarding the matter.

4. Exercise of other functions. Exercise of delegated investigative authority by the Department of Justice pursuant to this agreement shall not preclude the Department of Labor from making inquiries for the purpose of administrative action related to the crime being investigated. Nothing in this Memorandum of Understanding shall be construed to affect the investigative jurisdiction of the Department of Justice under other statutes.

5. Prosecution of Civil Enforcement Actions. Any violations of the Act, which form the basis for civil enforcement actions, will be investigated by the Department of Labor. Whenever the Department of Labor concludes that a civil enforcement action should be instituted, it will refer the case to the Department of Justice, with the request that suit be instituted on behalf of the Secretary of Labor, and will furnish the Department of Justice with all pertinent information in the possession of the Department of Labor. Upon receipt of such request, the Department of Justice will institute and will conduct the civil enforcement action on behalf of the Secretary of Labor. The Department of Justice will not institute any civil enforcement action under the Act except upon the request of the Department of Labor, nor will the Department of Justice voluntarily dismiss any action so instituted except with the concurrence of the Department of Labor. The Department of Justice will dismiss any action so instituted upon the request of the Department of Labor. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of Labor in the preparation and, to the extent feasible, in the presentation of such actions in court.

6. Section 504(a) Proceedings. Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, the Department of Labor through its own staff will investigate matters arising under section 504(a)(B) of title V, as amended, (judicial determination that a disqualified person's service in any prohibited capacity would not be contrary to the purposes of the LMRDA). Following the investigation, the Department of Labor will issue its views on the appropriateness of such a judicial determination under section 504(a)(B). The Department of Justice will present the Secretary of Labor's views before a Federal sentencing judge or United States district court, by making all necessary appearances and filings. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of Labor in the preparation and, to the extent feasible, in the presentation of the Secretary's views in court. With respect to relief under section 504(a) by judicial reduction of the period of disability, the Department of Justice will seek the views of the Department of Labor prior to opposing or agreeing to a request for such relief by a criminal defendant or disqualified person.

7. Instructions. So that the terms of understanding will be effectively performed, both Departments will issue instructions for the guidance of its officers, such instructions to be submitted for comment to the other Department prior to their issuance.

8. Periodic reviews of this agreement will be made to determine any adjustments which seem necessary based on experience under this Act.

***20603** Signed at Washington, DC, this 18th day of January 2005.

John Ashcroft,

Attorney General.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 05-7890 Filed 4-19-05; 8:45 am]

BILLING CODE 4510-CP-P

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